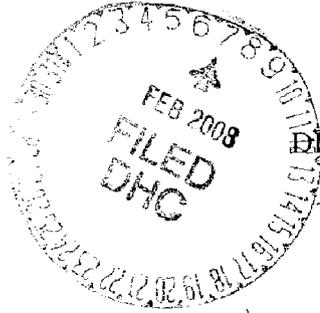


NORTH CAROLINA

WAKE COUNTY



BEFORE THE
 DISCIPLINARY HEARING COMMISSION
 OF
 THE NORTH CAROLINA STATE BAR
 05 DHC 28

The North Carolina State Bar,

Plaintiff

v.

Randal S. Marsh, Attorney,

Defendant

**Order Dissolving Stay of Suspension
 and
 Imposing Suspension of License**

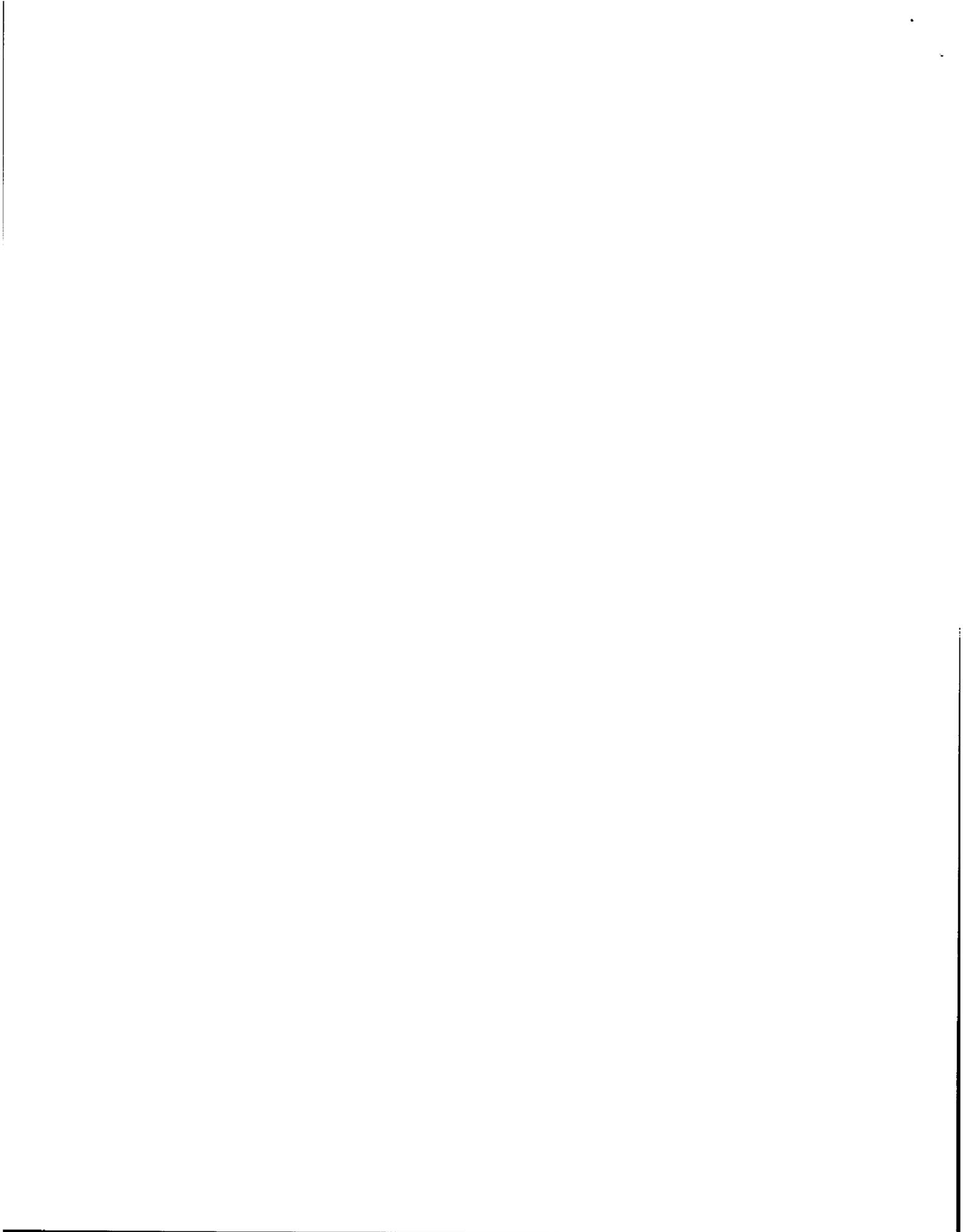
The Plaintiff's motion to lift the stay of the suspension of Defendant's license under the Order of Discipline entered by the Disciplinary Hearing Commission on April 3, 2006, was heard by a hearing committee of the Disciplinary Hearing Commission composed of Tommy W. Jarrett, Chair, and members Robert F. Siler and Johnny A. Freeman pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, §§ .0109 and .0114(x) on February 1, 2008. David Johnson, Deputy Counsel, appeared on behalf of the Plaintiff, the North Carolina State Bar. Randal S. Marsh did not appear either pro se or through counsel. Based on the record in this matter and the greater weight of the evidence presented, the Committee hereby makes the following:

FINDINGS OF FACT

1. The Disciplinary Hearing Commission entered an Order of Discipline in this case on April 3, 2006 that imposed a three year suspension of the Defendant's license. The Order stayed the suspension for three years conditioned upon Defendant's compliance with the conditions of the stay stated therein. The conditions of the stay as listed in the Order of Discipline include, but are not limited to:
 - (a) The Order required Defendant to complete a course, at his own expense, in law office management of at least eight hours of instruction, focusing primarily on ethics and trust account management, approved in advance by the Office of Counsel.
 - (b) The Order required Defendant to establish a general attorney trust account and maintain the trust account in accordance with the applicable rules and regulations of the North Carolina State Bar at all times. Within ten days after the account was established, Defendant was required to provide the Office of Counsel with the name of the bank and the account number of the trust account, as well as any new trust or fiduciary account established by Defendant for any purpose or any change to any existing account, such as closing the account, within ten days of the event.



- (c) The Order required Defendant to provide the Office of Counsel with the name and account number of all bank accounts, whether or not denominated as an operating account, trust account, or otherwise and regardless of whether or not Defendant has signatory authority, in which Defendant deposits funds received from clients or persons or entities with whom he has a fiduciary relationship for any purpose, including fees and expenses, with an identification of the nature of the account. This information was required to be produced to the Office of Counsel within ten days upon service of the Order.
- (d) The Order required Defendant to provide the Office of Counsel a valid, signed form permitting the Office of Counsel to obtain records of any bank account in which Defendant deposits any funds received from any client.
- (e) The Order required Defendant to have a complete audit and reconciliation of his trust account conducted by a licensed CPA. This audit was to show that all client funds have been fully accounted for and that there are no funds in the account belonging to Defendant unless permitted by Rule 1.15 of the Rules of Professional Conduct. The first audit report was to be provided to the Office of Counsel of the North Carolina State Bar by June 30, 2006.
- (f) The Order required Defendant to timely file all federal and state tax returns required by law and timely pay all required taxes during the period of suspension, including without limitation, any returns due in 2006. The Order also required Defendant provide the Office of Counsel with written verification in the form of a copy of a signed and dated return, certified by him as true and accurate that he has filed all required personal and business tax returns with the North Carolina Department of Revenue and the Internal Revenue Service during each year of the stayed suspension, including those due in 2006. The written verification was to be provided to the Office of Counsel within thirty days of the date the return was filed.
- (g) The Order required Defendant to provide the Office of Counsel with a valid, signed authorization for the Office of Counsel to request records from the North Carolina Department of Revenue and the Internal Revenue Service showing that required tax returns have been filed and all taxes due have been paid. This authorization was due within thirty days of service of the Order.
- (h) The Order required Defendant to resign as co-trustee of the Herndon Trust and provide a copy of the resignation to the Office of Counsel within seven days of service of the Order.
- (i) The Order required that Defendant respond to all communications from the North Carolina State Bar within thirty days of receipt or by the deadline stated in the communication, whichever is sooner.



- (j) The Order required that Defendant pay all costs of the DHC proceeding, including the costs of his deposition and the witness expenses, within ninety days of service upon him of the statement of costs as assessed by the Secretary.
2. The effective date of the Order of Discipline was the date of the Acceptance of Service of Order of Discipline by Defendant's then attorney of record, David W. Yates, April 6, 2006.
 3. The Defendant has maintained the same mailing address with the North Carolina State Bar since service of the Order of Discipline as before entry of the Order of Discipline. The Plaintiff's Motion to Show Cause was sent by certified mail, return receipt requested to the Defendant's address of record and was accepted at that address. The Committee's Order to Show Cause and Notice of Hearing were both mailed to Defendant's address of record. Neither the Order to Show Cause nor the Notice of Hearing were returned by the United States Postal Service as refused or undeliverable.
 4. Defendant has failed to pay Bar membership dues, Client Security Fund assessments, or any other fees or obligations due to the North Carolina State Bar since January 2005 for the period ending December 31, 2005 as required by Bar rule, statutes, and the Order of Discipline.
 5. Defendant has failed to report or cause to be reported any attendance at any Continuing Legal Education (CLE) courses during calendar years 2006 and 2007. Defendant has failed to file his 2006 CLE attendance report with the State Bar as required by Bar rule and the Order of Discipline.
 6. Defendant has failed to comply with any of the conditions of the stay of the suspension of his license specified in the Order of Discipline identified in findings of fact 1, 4, and 5 above.

Based upon these findings of fact, the Hearing Committee hereby enters the following:

CONCLUSIONS OF LAW

1. The Disciplinary Hearing Commission retained jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension and this matter is properly before this hearing committee.
2. The Plaintiff has established by the greater weight of the evidence that the Defendant has failed to comply with any of the conditions of the stay of the suspension of his license identified in the findings of fact.
3. Under the terms of the above cited paragraphs of the Order of Discipline, Defendant's failure to comply with any of the conditions of the stay in a timely manner justifies the

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dissolution of stay of the suspension and the activation of the entire three year suspension of Defendant's license.

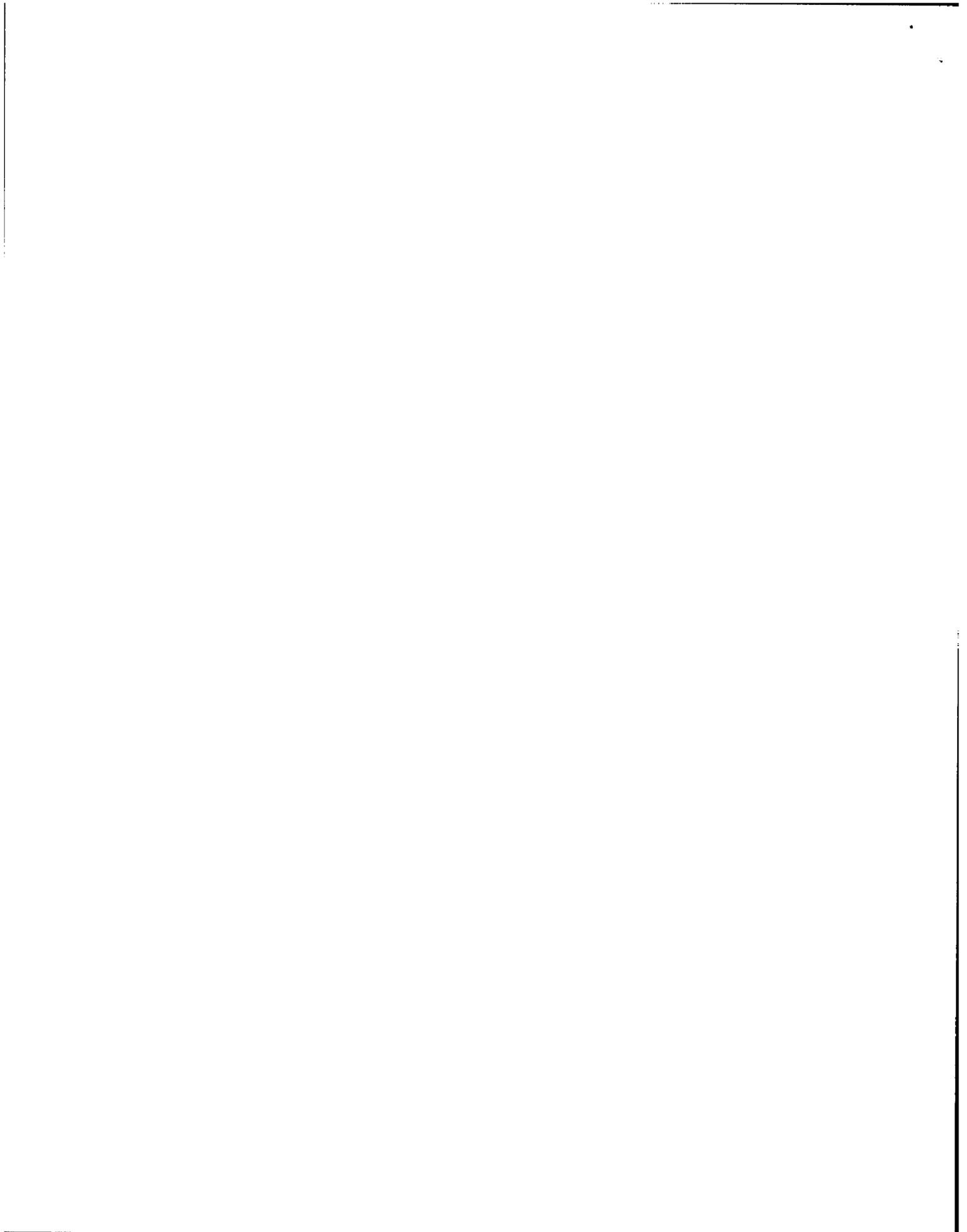
THEREFORE, it is hereby

ORDERED

1. The stay of Defendant's three year suspension pursuant to the Order of Discipline entered in this matter is hereby dissolved and the license of the Defendant, Randal S. Marsh, is hereby suspended from the practice of law for three years. This suspension is effective thirty days after service of this Order.
2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days service of this Order of Discipline.
3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the North Carolina State Bar Discipline & Disability Rules, including but not limited to distributing any clients or initiating appropriate escheat procedures. Defendant shall file an affidavit certifying he has complied with the wind down rule with the Secretary of the North Carolina State Bar within 30 days of the effective date of this order.

IT IS FURTHER ORDERED that, in order to qualify for reinstatement, Defendant must comply with the conditions for the stay of his suspension, as set forth in the Order of Discipline, as well as the requirements of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125, including but not limited to those conditions specified in Paragraph 1 of the Findings of Fact in this Order and:

- (a) compliance with Rule .0124 of this subchapter;
- (b) compliance with all applicable orders of the commission and the council;
- (c) abstention from the unauthorized practice of law during the period of suspension;
- (d) attainment of a passing grade on a regularly scheduled North Carolina bar examination, if the suspended attorney applies for reinstatement of his or her license more than seven years after the effective date of the suspension;
- (e) abstention from conduct during the period of suspension constituting grounds for discipline under G.S. 84-28(b);
- (f) reimbursement of the Client Security Fund of the North Carolina State Bar for all sums, including costs other than overhead expenses, disbursed by the Client Security Fund as a result of the petitioner's misconduct;



- (g) reimbursement of all sums which the Disciplinary Hearing Commission found in the order of suspension were misappropriated by the petitioner and which have not been reimbursed by the Client Security Fund;
- (h) satisfaction of the minimum continuing legal education requirements, as set forth in Rule .1517 of Subchapter 1D of these rules, for the two calendar years immediately preceding the year in which the petitioner was suspended, which shall include the satisfaction of any deficit recorded in the petitioner's State Bar CLE transcript for such period;
- (i) completion of the requisite hours of CLE within the time period required by the rule; and
- (j) payment of all membership fees, Client Security Fund assessments, and late fees due and owing to the North Carolina State Bar as well as all attendee fees and late penalties due and owing to the Board of Continuing Legal Education at the time of suspension.

Signed by the undersigned hearing committee chair with the consent of the other hearing committee members.

This the 5th day of February, 2008.



Tommy W. Jarrett, Chair
Disciplinary Hearing Committee

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